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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/825,065

04/14/2004

Karl J. Duyck

0174-PA-CIP

7216

7590

02/02/2010

Michael P. Dilworth  
CROMPTON CORPORATION  
Benson Road  
Middlebury, CT 06749

EXAMINER

GOLOBOY, JAMES C

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

02/02/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/825,065 | <b>Applicant(s)</b><br>DUYCK ET AL. |  |
|                              | <b>Examiner</b><br>James Goloboy     | <b>Art Unit</b><br>1797             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-9,11-19 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5-9, 11-19, 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The rejections set forth in the office action mailed 6/22/09 are maintained below.

#### ***Claim Rejections - 35 USC § 103***

2. Claims 1, 5-9, 11-19, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeler in view of Aebli (U.S. Pat. No. 6,315,925).

This rejection is adequately set forth in paragraph 2 of the office action mailed 6/22/09, which is incorporated here by reference.

#### ***Response to Arguments***

3. Applicant's arguments filed 11/23/09 have been fully considered but they are not persuasive.

Applicant argues that the process features of the claims impart structure to the claimed composition, but as discussed in the rejection the composition arising from the composition of Wheeler and Aebli has those structural characteristics. Applicant disagrees with this position, arguing that Wheeler does not identify nonyl acridans. Wheeler discloses that the acridan can be formed from the reaction of a dialkylated diphenylamine and a ketone (column 4 lines 54-66), and teaches that the alkyl group is a C<sub>1</sub>-C<sub>18</sub> alkyl group. It is also noted that in the examples of Wheeler (AC2 and AC3), both alkyl groups are the same. Wheeler therefore leads one of ordinary skill in the art to select a dialkylated diphenylamine reactant where both alkyl groups are the same, and there are eighteen possibilities, not "hundreds or thousands". It therefore would

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have been obvious to one of ordinary skill in the art to select a dinonylated acridan as the acridan of Wheeler.

Applicant further argues that Wheeler fails to teach tri-substituted acridans. While the examiner agrees with this statement, it is not applicable to the case where the antioxidant mixture of Aebli is combined with the acridan of Wheeler, as the claim does not prohibit the composition from comprising additional diphenylamines. However, this argument is persuasive regarding the case where Aebli is used as a reactant in forming the acridans of Wheeler, since Aebli does not enable the preparation of a diphenylamine mixture free of tri-substituted diphenylamines, and neither Wheeler or Aebli teach the functionality of tri-substituted acridans.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Goloboy whose telephone number is (571)272-2476. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JCG

/Glenn A Caldarola/  
Acting SPE of Art Unit 1797